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# SENATE BILL No. 350

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-22-2-26; IC 5-14-3.5; IC 5-28; IC 6-3.1; IC 34-30-2-14.7.

**Synopsis:** Access to state financial data. Requires state agencies to accept public comments on proposed rules that are sent electronically. Requires the auditor of state, working with the office of technology, to develop and maintain an Internet web site detailing all state expenditures by state agencies (expenditure web site). Requires state agencies to provide information to the auditor of state and to develop links on agency Internet web sites to the expenditure web site. Requires the auditor of state to maintain a link on the expenditure web site to the budget agency information on how budgets are formed. Adds various job and employee definitions to the Indiana economic development corporation (IEDC) laws. Requires all records related to taxpayer funded economic development incentives to be disclosed under the open records law. Provides that the IEDC's annual job creation incentives and compliance report (IEDC annual report) must be published on the expenditure web site. Requires the IEDC and the department of state revenue to compile information on all job creation incentives granted, including the aggregate amount of uncollected or diverted state tax revenues resulting from each incentive, and requires that this information be included in the IEDC annual report. Requires the IEDC to recapture incentives from a recipient failing to make the level of capital investment, failing to create or retain the promised number of jobs, or paying less in wages than specified in the agreement. Requires the IEDC to compile information on all recapture activities and incentives recouped from unfulfilled commitments and to include this information in the IEDC annual report. Requires  
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**Effective:** July 1, 2011.

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### Broden

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January 11, 2011, read first time and referred to Committee on Commerce & Economic Development.

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Digest Continued

incentive recipients to prepare annual progress reports on the number of jobs created or retained, employee pay, and various other information concerning the use of the job creation incentives, and requires the IDEC to compile this information and include it in the IDEC annual report. Repeals the definition of job creation incentive and replaces it without change to maintain alphabetical order.

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Introduced

First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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# SENATE BILL No. 350



A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 4-22-2-26 IS AMENDED TO READ AS  
 2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 26. (a) After the notices  
 3 and the text of an agency's proposed rule are published under section  
 4 24 of this chapter, the agency shall conduct a public hearing on the  
 5 proposed rule.  
 6 (b) The agency shall convene the public hearing on the date and at  
 7 the time and place stated in its notices.  
 8 (c) The agency may conduct the public hearing in any informal  
 9 manner that allows for an orderly presentation of comments and avoids  
 10 undue repetition. However, the agency shall afford any person  
 11 attending the public hearing an adequate opportunity to comment on  
 12 the agency's proposed rule through the presentation of oral and written  
 13 facts or argument.  
 14 (d) The agency may recess the public hearing and reconvene it on  
 15 a different date or at a different time or place by:



- 1 (1) announcing the date, time, and place of the reconvened public
- 2 hearing in the original public hearing before its recess; and
- 3 (2) recording the announcement in the agency's record of the
- 4 public hearing.

5 **The agency shall include information concerning the new date,**  
 6 **time, and place of the reconvened public hearing on the web site of**  
 7 **the agency.**

8 (e) An agency that complies with subsection (d) is not required to  
 9 give any further notice of a public hearing that is to be reconvened.

10 **(f) An agency shall provide for public comments to be presented**  
 11 **electronically. The notice required under section 24 of this chapter**  
 12 **must include information to allow the public to make comments**  
 13 **electronically on the same date on which the public hearing is held.**  
 14 **If there are additional public hearings under subsection (d),**  
 15 **electronic comments must be accepted on the new date.**  
 16 **Announcement of a new date under subsection (d) must include**  
 17 **information on how the public comments are to be made.**

18 SECTION 2. IC 5-14-3.5 IS ADDED TO THE INDIANA CODE  
 19 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 20 JULY 1, 2011]:

21 **Chapter 3.5. Access to Financial Data**

22 **Sec. 1. As used in this chapter, "state agency" means an**  
 23 **authority, a board, a branch, a commission, a committee, a**  
 24 **department, a division, or another instrumentality of government,**  
 25 **including the administrative branch of state government, the**  
 26 **legislative branch of government, the judicial branch of state**  
 27 **government, and state educational institutions.**

28 **Sec. 2. Beginning July 1, 2011, the auditor of state shall work**  
 29 **with the office of technology established by IC 4-13.1-2-1 to**  
 30 **establish and maintain on the Internet a web site setting forth a**  
 31 **data base of expenditures, including expenditures for contracts and**  
 32 **grants, that is electronically searchable by the public. The data**  
 33 **base must include, for each state agency, the amount budgeted and**  
 34 **amount spent for each program of the agency, including:**

- 35 (1) the amount, date, payer, and payee of expenditures;
- 36 (2) a listing of state expenditures by:
  - 37 (A) personal services;
  - 38 (B) other operating expenses; or
  - 39 (C) total operating expenses;
- 40 to reflect how the funds were appropriated in the state budget
- 41 act; and
- 42 (3) a link to the budget agency for information on how the

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budget is developed and adopted.

**Sec. 3.** To the extent possible, the auditor of state shall present information in the data base set forth in the web site established under this chapter in a manner that is searchable and intuitive to users. The auditor of state shall enhance and organize the presentation of the information through the use of graphic representations, including pie charts, if the auditor of state considers graphics appropriate. The data base must allow users to:

- (1) search and aggregate state funding by each element of the data on the Internet web site;
- (2) ascertain through a single search the total amount of state funding awarded or paid to a person or entity by a state agency;
- (3) download information yielded by a search of the data base;
- (4) allow for a keyword search of all contracts entered into by the state;
- (5) allow an individual to view a list of all state contracts; and
- (6) allow an individual to sort and view a list of all contracts sorted by program.

**Sec. 4. (a)** The auditor of state may not allow public access under this section to:

- (1) a payee's address, other than the county in which the payee is located;
- (2) personal information that is protected under state or federal law or rule; or
- (3) information that is protected as a trade secret under state or federal law or by rule.

**(b)** The auditor of state may make information protected under subsection (a) available only in an aggregate format.

**Sec. 5.** The auditor of state and employees of the auditor of state are immune from any civil liability for posting confidential information under section 4 of this chapter if the auditor of state or an employee of the auditor of state posted the information in reliance on a determination made by a state agency about the confidentiality of information relating to the agency's expenditures.

**Sec. 6.** To the extent any information required to be in the data base is being collected or maintained by a state agency, the state agency shall provide that information to the auditor of state for inclusion in the data base.

**Sec. 7.** The auditor of state may not charge a fee for access to the data base.

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1           **Sec. 8. Except as provided in section 9 of this chapter, a state**  
2 **agency shall cooperate with and provide information to the auditor**  
3 **of state as necessary to implement and administer this chapter.**  
4           **Sec. 9. This chapter does not require a state agency to record**  
5 **information or expend resources for the purpose of computer**  
6 **programming to make information reportable under this chapter.**  
7           **Sec. 10. The office of technology established by IC 4-13.1-2-1**  
8 **shall work with the auditor of state to include in the web site**  
9 **established under this chapter a link to each Internet web site**  
10 **operated by:**  
11           **(1) the state; or**  
12           **(2) a state agency.**  
13           **Sec. 11. Each state agency shall include on the agency's Internet**  
14 **web site a link to the web site established under this chapter.**  
15           SECTION 3. IC 5-28-2-4.1 IS ADDED TO THE INDIANA CODE  
16 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
17 1, 2011]: **Sec. 4.1. "Full-time employee" has the meaning set forth**  
18 **in IC 6-3.1-13-4.**  
19           SECTION 4. IC 5-28-2-4.2 IS ADDED TO THE INDIANA CODE  
20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
21 1, 2011]: **Sec. 4.2. (a) "Full-time permanent job" means**  
22 **employment in which a new employee works for the recipient of a**  
23 **job creation incentive as a full-time employee without any expected**  
24 **date of termination.**  
25           **(b) The term does not include a temporary job.**  
26           SECTION 5. IC 5-28-2-4.5 IS ADDED TO THE INDIANA CODE  
27 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
28 1, 2011]: **Sec. 4.5. "Job creation incentive" means a tax credit, tax**  
29 **deduction, grant, loan, or loan guarantee that a statute authorizes**  
30 **the state or an instrumentality of the state (excluding any political**  
31 **subdivision or other unit of local government) to award or approve**  
32 **for the purpose of encouraging the creation of new jobs in Indiana.**  
33           SECTION 6. IC 5-28-2-4.6 IS ADDED TO THE INDIANA CODE  
34 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
35 1, 2011]: **Sec. 4.6. "Job creation incentive agreement" or "incentive**  
36 **agreement" means any agreement executed by the corporation and**  
37 **the recipient of a job creation incentive setting forth the terms and**  
38 **conditions of the job creation incentive to be provided to the**  
39 **recipient.**  
40           SECTION 7. IC 5-28-2-4.7 IS ADDED TO THE INDIANA CODE  
41 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
42 1, 2011]: **Sec. 4.7. "New employee" means a full-time employee**

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who:

- (1) is first employed by the recipient of a job creation incentive at the specific project site that is the subject of the job creation incentive agreement executed by the corporation and the recipient; and
- (2) is employed by the recipient after the recipient enters into the job creation incentive agreement.

SECTION 8. IC 5-28-2-4.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 4.8. "Part-time job" means employment in which a new employee works for the recipient of a job creation incentive for fewer hours each week than the number of hours necessary to be considered a full-time employee.**

SECTION 9. IC 5-28-2-4.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 4.9. "Retained employee" means any employee:**

- (1) who has a full-time or full-time equivalent job at a specific facility or site;
- (2) the continuance of whose job is threatened by a specific and demonstrable threat, as specified by the applicant in the application for a job creation incentive; and
- (3) whose job is preserved.

SECTION 10. IC 5-28-2-6.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 6.5. "Temporary job" means employment in which a new employee is hired for a specific duration of time or season.**

SECTION 11. IC 5-28-5-9, AS ADDED BY P.L.4-2005, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 9. (a) Except as specifically provided by law, the corporation and the board are subject to IC 5-14-1.5 and IC 5-14-3.**

**(b) All records required to be prepared or maintained under this article, including any cost analyses, audits, recipient compliance reports, and any other records or proceedings of the corporation, must be disclosed as provided by IC 5-14-3. In addition, if:**

- (1) the corporation contracts with an entity to perform a cost analysis as part of a determination by the corporation of whether to provide a job creation incentive; and
- (2) the estimated contract price exceeds twenty-five thousand dollars (\$25,000);

**that cost analysis must be disclosed as provided by IC 5-14-3.**

SECTION 12. IC 5-28-6-2, AS AMENDED BY P.L.120-2008,

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1 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 2 JULY 1, 2011]: Sec. 2. (a) The corporation shall develop and promote  
 3 programs designed to make the best use of Indiana resources to ensure  
 4 a balanced economy and continuing economic growth for Indiana, and,  
 5 for those purposes, may do the following:  
 6 (1) Cooperate with federal, state, and local governments and  
 7 agencies in the coordination of programs to make the best use of  
 8 Indiana resources.  
 9 (2) Receive and expend funds, grants, gifts, and contributions of  
 10 money, property, labor, interest accrued from loans made by the  
 11 corporation, and other things of value from public and private  
 12 sources, including grants from agencies and instrumentalities of  
 13 the state and the federal government. The corporation:  
 14 (A) may accept federal grants for providing planning  
 15 assistance, making grants, or providing other services or  
 16 functions necessary to political subdivisions, planning  
 17 commissions, or other public or private organizations;  
 18 (B) shall administer these grants in accordance with the terms  
 19 of the grants; and  
 20 (C) may contract with political subdivisions, planning  
 21 commissions, or other public or private organizations to carry  
 22 out the purposes for which the grants were made.  
 23 (3) Direct that assistance, information, and advice regarding the  
 24 duties and functions of the corporation be given to the corporation  
 25 by an officer, agent, or employee of the executive branch of the  
 26 state. The head of any other state department or agency may  
 27 assign one (1) or more of the department's or agency's employees  
 28 to the corporation on a temporary basis or may direct a division  
 29 or an agency under the department's or agency's supervision and  
 30 control to make a special study or survey requested by the  
 31 corporation.  
 32 (b) The corporation shall perform the following duties:  
 33 (1) Develop and implement industrial development programs to  
 34 encourage expansion of existing industrial, commercial, and  
 35 business facilities in Indiana and to encourage new industrial,  
 36 commercial, and business locations in Indiana.  
 37 (2) Assist businesses and industries in acquiring, improving, and  
 38 developing overseas markets and encourage international plant  
 39 locations in Indiana. The corporation, with the approval of the  
 40 governor, may establish foreign offices to assist in this function.  
 41 (3) Promote the growth of minority business enterprises by doing  
 42 the following:

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- 1 (A) Mobilizing and coordinating the activities, resources, and
- 2 efforts of governmental and private agencies, businesses, trade
- 3 associations, institutions, and individuals.
- 4 (B) Assisting minority businesses in obtaining governmental
- 5 or commercial financing for expansion or establishment of
- 6 new businesses or individual development projects.
- 7 (C) Aiding minority businesses in procuring contracts from
- 8 governmental or private sources, or both.
- 9 (D) Providing technical, managerial, and counseling assistance
- 10 to minority business enterprises.
- 11 (4) Assist the office of the lieutenant governor in:
- 12 (A) community economic development planning;
- 13 (B) implementation of programs designed to further
- 14 community economic development; and
- 15 (C) the development and promotion of Indiana's tourist
- 16 resources.
- 17 (5) Assist the secretary of agriculture and rural development in
- 18 promoting and marketing of Indiana's agricultural products and
- 19 provide assistance to the director of the Indiana state department
- 20 of agriculture.
- 21 (6) With the approval of the governor, implement federal
- 22 programs delegated to the state to carry out the purposes of this
- 23 article.
- 24 (7) Promote the growth of small businesses by doing the
- 25 following:
- 26 (A) Assisting small businesses in obtaining and preparing the
- 27 permits required to conduct business in Indiana.
- 28 (B) Serving as a liaison between small businesses and state
- 29 agencies.
- 30 (C) Providing information concerning business assistance
- 31 programs available through government agencies and private
- 32 sources.
- 33 (8) Establish a public information page on its current Internet site
- 34 on the world wide web. The page must provide the following:
- 35 ~~(A) By program, cumulative information on the total amount~~
- 36 ~~of incentives awarded, the total number of companies that~~
- 37 ~~received the incentives and were assisted in a year, and the~~
- 38 ~~names and addresses of those companies.~~
- 39 **(A) The job creation incentives and compliance report**
- 40 **required by IC 5-28-28-5.**
- 41 (B) A mechanism on the page whereby the public may request
- 42 further information online about specific programs or

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incentives awarded.  
(C) A mechanism for the public to receive an electronic response.  
**(D) A link to the web site maintained by the auditor of state under IC 5-14-3.5.**

- (c) The corporation may do the following:
  - (1) Disseminate information concerning the industrial, commercial, governmental, educational, cultural, recreational, agricultural, and other advantages of Indiana.
  - (2) Plan, direct, and conduct research activities.
  - (3) Assist in community economic development planning and the implementation of programs designed to further community economic development.

SECTION 13. IC 5-28-6-6, AS ADDED BY P.L.110-2010, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. The corporation shall require an applicant for a job creation incentive to be granted by the corporation after March 31, 2010, to enter into ~~an~~ **a job creation incentive** agreement with the corporation as a condition of receiving the incentive. Subject to IC 5-28-28-8, the agreement must include the following requirements:

- (1) The number of individuals that are expected to be employed by the applicant.
- (2) A requirement that the applicant will file with the compliance officer an annual compliance report ~~detailing the applicant's compliance; or progress toward compliance;~~ with subdivision (1): **as required by IC 5-28-28-10.**
- (3) A provision that notifies the applicant that the applicant is subject to a determination of the corporation under this subdivision. The corporation, after a finding that the applicant is employing fewer individuals than the applicant agreed to employ under subdivision (1), subject to any confidentiality laws, shall hold a hearing to determine if the applicant shall be required to pay back to the state a part of the incentive granted to the applicant under the agreement. The penalty imposed must be a matter of public record and must reflect in a fair and balanced way the amount of incentive received.
- (4) A ~~requirement~~ **recapture provision requiring that** the applicant ~~will~~ **to** pay back to the state the **job creation** incentive that has been received by the applicant if the applicant:
  - (A)** moves or closes;
  - (B)** **does not make the level of capital investment specified by the applicant in the application for the job creation**

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**incentive;**  
**(C) employs fewer individuals than specified by the applicant in the application for the job creation incentive;**  
**or**  
**(D) pays less in wages than specified by the applicant in the application for the job creation incentive.**

SECTION 14. IC 5-28-28-5, AS ADDED BY P.L.222-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) Beginning February 1, 2008, the corporation shall:

- (1) ~~submit an economic~~ **prepare an annual job creation incentives and compliance report for submission:**
  - (A) to the governor; and
  - (B) ~~to~~ the legislative council in an electronic format under IC 5-14-6; and
- (2) publish the report on the corporation's Internet web site **and on the Internet web site maintained by the auditor of state under IC 5-14-3.5.**

~~on the schedule specified in subsection (b):~~

~~(b) Before August 2, 2009, the corporation shall submit and publish before February 1 and August 1 of each year an incentives and compliance report that covers the six (6) month period that ends one (1) month before the report is due. After August 1, 2009, The corporation shall submit and publish before August 1 of each year an~~ **the job creation incentives and compliance report that covers under subsection (a) before August 1 of each year. The report must cover the twelve (12) month period that ends one (1) month before the report is due: immediately preceding July 1 through June 30 period.**

SECTION 15. IC 5-28-28-6, AS ADDED BY P.L.222-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. The ~~economic job creation~~ **incentives and compliance report required under section 5 of this chapter must include at least the following:**

- (1) The total amount of each of the following:
  - (A) Tax credits approved or awarded by the corporation, **including the aggregate amount of uncollected or diverted state tax revenues resulting from each tax credit, as reported to the department of state revenue on tax returns filed during the state fiscal year that ends immediately before the due date of the report. Before July 15 each year, the department of state revenue shall submit to the corporation the information necessary for the corporation**

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- 1                   **to include these aggregate amounts in the corporation's**
- 2                   **report.**
- 3                   (B) Loans made by the corporation.
- 4                   (C) Grants made by the corporation.
- 5                   (2) With respect to each recipient of a tax credit, loan, or grant
- 6                   referred to in subdivision (1):
- 7                    (A) The name and address of the recipient.
- 8                    (B) The amount of the tax credit, loan, or grant.
- 9                    (C) The purpose of the tax credit, loan, or grant.
- 10                  (D) Representations of the following made by the recipient at
- 11                  the time of application for the tax credit, loan, or grant:
- 12                    (i) Numbers of employees to be hired, retained, or trained.
- 13                    (ii) Certification by the corporation that each recipient is
- 14                    meeting the program requirements and representations made
- 15                    in the recipient's application concerning the wages and
- 16                    compensation provided to employees who have been or are
- 17                    to be hired, trained, or retrained.
- 18                    (iii) Other benefits to be provided to employees to be hired,
- 19                    retained, or trained.
- 20                  (E) The extent to which the recipient has complied with the
- 21                  representations referred to in clause (D).
- 22                  **(3) A summary of the information submitted by certified**
- 23                  **technology parks as part of the corporation's review under**
- 24                  **IC 36-7-32-11.**
- 25                  **(4) All data in all of the compliance reports submitted under**
- 26                  **section 10 of this chapter.**
- 27                  **(5) By program, cumulative information on the total amount**
- 28                  **of job creation incentives awarded, the total number of**
- 29                  **companies that received the job creation incentives and were**
- 30                  **assisted during the year, and the names and addresses of those**
- 31                  **companies.**

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32                   SECTION 16. IC 5-28-28-7, AS AMENDED BY P.L.110-2010,  
 33                   SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 34                   JULY 1, 2011]: Sec. 7. (a) If, in the course of compiling information to  
 35                   complete a **job creation incentives and compliance** report required by  
 36                   section 5 of this chapter or upon the receipt of any other information  
 37                   concerning noncompliance with the terms and conditions of an  
 38                   incentive granted by the corporation, the corporation determines that  
 39                   a recipient of an incentive awarded by the corporation has not complied  
 40                   with the representations that the recipient made in obtaining the  
 41                   incentive, the corporation shall take the actions required under  
 42                   **subsections subsection (b) and or (d), whichever applies.**



1 (b) If the incentive is a grant or loan awarded before April 1, 2010,  
2 the corporation shall determine:

- 3 (1) whether there was good cause for the noncompliance; and
- 4 (2) whether the recipient is in default.

5 If in the judgment of the corporation there is not good cause for any  
6 noncompliance discovered under subsection (a), the corporation may  
7 seek a refund or arrange other methods of reclaiming the grant or loan  
8 from the recipient. If the corporation does seek a refund or otherwise  
9 reclaims a grant or loan from the recipient under this section, the  
10 amount of the refund or reclaimed part must be in proportion to the  
11 degree of default by the recipient as determined by the corporation.

12 (c) Subsection (b) does not apply to a recipient of a grant or loan if:

- 13 (1) the grant or loan has been disbursed on a pro rata basis; and
- 14 (2) in the judgment of the corporation, the recipient's performance  
15 in relation to the recipient's performance goals equals or exceeds  
16 the ratio of the amount of the recipient's actual benefit from the  
17 grant or loan to the total amount of the grant or loan originally  
18 contemplated in the grant or loan award.

19 (d) If the incentive granted by the corporation was awarded after  
20 March 31, 2010, the corporation shall seek a refund or arrange other  
21 methods of reclaiming the value of the incentive granted by the  
22 corporation from the recipient. The amount of the refund or reclaimed  
23 part must be in proportion to the degree of default by the recipient as  
24 determined by the corporation.

25 SECTION 17. IC 5-28-28-8, AS ADDED BY P.L.110-2010,  
26 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
27 JULY 1, 2011]: Sec. 8. (a) As used in this section, "recapture  
28 provision" means language that requires the recipient of **an a job**  
29 **creation** incentive to repay some part of the incentive.

30 (b) The corporation may waive or modify a recapture provision of  
31 this article or an agreement made with a person to whom the  
32 corporation has awarded **an a job creation** incentive if the corporation  
33 determines that the recipient of **an the** incentive awarded by the  
34 corporation has failed to meet a condition for receiving the incentive  
35 because of circumstances beyond the recipient's control, including:

- 36 (1) natural disaster;
- 37 (2) unforeseen industry trends;
- 38 (3) lack of available labor force;
- 39 (4) loss of a major supplier or market; or
- 40 (5) another circumstance beyond the recipient's control, as  
41 determined by the corporation.

42 SECTION 18. IC 5-28-28-9, AS ADDED BY P.L.110-2010,

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1 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
2 JULY 1, 2011]: Sec. 9. (a) Beginning in 2010, the ~~economic job~~  
3 **creation** incentives and compliance report required under section 5 of  
4 this chapter must include ~~an annual report~~ **a part** containing a  
5 summary **of annual** statistics on the effectiveness of and compliance  
6 with all incentives granted by the corporation. The **part of the job**  
7 **creation incentives and compliance** report required by this section  
8 must describe:

- 9 (1) the overall compliance with the terms and conditions of
- 10 incentives provided; and
- 11 (2) penalties imposed for failure to comply with the terms and
- 12 conditions of incentives provided, **including a description of the**
- 13 **outcomes and effectiveness of recapture provisions, organized**
- 14 **by job creation incentive program, along with at least the**
- 15 **following information:**
  - 16 (A) **The total number of companies receiving a job creation**
  - 17 **incentive.**
  - 18 (B) **The total number of recipients in violation of a job**
  - 19 **creation incentive agreement.**
  - 20 (C) **The total number of recapture efforts initiated.**
  - 21 (D) **The total number of recapture efforts completed.**
  - 22 (E) **The number of recapture waivers granted.**

23 The report must also be submitted to the general assembly in an  
24 electronic format under ~~IC 5-14-6~~.

25 (b) Upon request, the corporation shall make available **as a public**  
26 **record under IC 5-14-3:**

- 27 (1) information specifying each person's compliance with its
- 28 incentive agreement and any incentive that had to be reduced or
- 29 paid back as a result of noncompliance with an incentive
- 30 agreement;
- 31 (2) information stating, for each incentive recipient, the total
- 32 incentive provided for each job created, computed from the date
- 33 the incentive is granted through June 30 of the year of the report;
- 34 (3) information concerning all waivers or modifications under
- 35 section 8 of this chapter; and
- 36 (4) information describing all hearings and determinations under
- 37 IC 5-28-6-6.

38 (c) **The corporation shall post the job creation incentives and**  
39 **compliance report prepared under section 5 of this chapter on the**  
40 **web site maintained by the auditor of state under IC 5-14-3.5.**

41 SECTION 19. IC 5-28-28-10 IS ADDED TO THE INDIANA  
42 CODE AS A **NEW** SECTION TO READ AS FOLLOWS

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1 [EFFECTIVE JULY 1, 2011]: **Sec. 10. (a) Before July 15 each year,**  
 2 **each recipient of a job creation incentive shall submit to the**  
 3 **corporation an annual compliance report covering the immediately**  
 4 **preceding July 1 through June 30 period. A recipient that is a**  
 5 **party to multiple job creation incentive agreements for a single**  
 6 **project site may file a consolidated compliance report. A**  
 7 **compliance report must include at least the following information:**  
 8 **(1) Each application tracking number.**  
 9 **(2) The recipient's:**  
 10 **(A) office mailing address;**  
 11 **(B) telephone number; and**  
 12 **(C) six (6) digit North American Industry Classification**  
 13 **System (NAICS) code assigned to industries in the NAICS**  
 14 **Manual of the United States Office of Management and**  
 15 **Budget;**  
 16 **and the name of the recipient's chief officer or authorized**  
 17 **designee for the specific project site for which the job creation**  
 18 **incentive was approved.**  
 19 **(3) The job creation incentive program and the value of the**  
 20 **job creation incentive that was approved by the corporation.**  
 21 **(4) The total number of the recipient's employees at the**  
 22 **specific project site on the date on which the application was**  
 23 **submitted to the corporation, and total number of the**  
 24 **recipient's employees at the specific project site on the date of**  
 25 **the report, including, for each date:**  
 26 **(A) the number of employees with full-time permanent**  
 27 **jobs;**  
 28 **(B) the number of employees with part-time jobs; and**  
 29 **(C) the number of employees with temporary jobs;**  
 30 **and a computation of the increase or decrease in the number**  
 31 **of employees within each category set forth in clauses (A)**  
 32 **through (C) between the date of submission of the application**  
 33 **and the date of the report.**  
 34 **(5) The number of:**  
 35 **(A) jobs for new employees that the recipient promised in**  
 36 **the job creation incentive agreement to create; and**  
 37 **(B) jobs for retained employees that the recipient promised**  
 38 **in the job creation incentive agreement to preserve;**  
 39 **broken down by full-time permanent jobs, part-time jobs, and**  
 40 **temporary jobs.**  
 41 **(6) A declaration of whether the recipient is in compliance**  
 42 **with each term and condition of the job creation incentive**

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**agreement.**  
**(7) The following for the full-time permanent jobs that the recipient created or retained as a result of the job creation incentive:**

- (A) A detailed list of the:**
  - (i) occupations; or**
  - (ii) job classifications;**
- of the jobs.**
- (B) A schedule of the starting dates for the new employees hired for the jobs.**
- (C) The actual average wage paid to the employees with the jobs, broken down by occupation or job classification.**
- (D) The total payroll for the new employees and retained employees with these jobs.**

- (8) A narrative, if necessary, stating whether and, if so, how the recipient's use of the job creation incentive during the reporting year has reduced employment at any site in Indiana.**
- (9) A certification by the chief officer of the recipient or the chief officer's authorized designee that the information in the compliance report contains no knowing misrepresentation of material facts upon which eligibility for the job creation incentive is based.**
- (10) Any other information the corporation considers necessary to ensure compliance with a job creation incentive program.**

**(b) The corporation may verify information contained in the recipient's compliance report, including by inspecting the specific project site and records of the recipient that relate to the job creation incentive agreement.**

**(c) If a recipient of a job creation incentive fails to comply with subsection (a), the corporation shall suspend all current job creation incentives being provided to the recipient, effective the immediately following October 1. In addition, the corporation shall not complete any current job creation incentive being provided to the recipient or provide any future job creation incentive to the recipient until the corporation receives proof that the recipient has complied with subsection (a).**

SECTION 20. IC 6-3.1-13.5-12, AS AMENDED BY P.L.4-2005, SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 12. (a) If a taxpayer receives a credit under this chapter, the equipment, machinery, facilities improvements, facilities, buildings, or foundations for which the credit was granted must be fully

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1 installed or completed not more than five (5) years after the corporation  
2 issues a letter under section 10 of this chapter certifying that the  
3 taxpayer is entitled to claim the credit.

4 (b) If a taxpayer receives a credit under this chapter and does not  
5 make the qualified investment (or a part of the qualified investment)  
6 for which the credit was granted within the time required by subsection  
7 (a), the corporation ~~may~~ **shall** require the taxpayer to repay the  
8 following:

9 (1) The additional amount of state tax liability that would have  
10 been paid by the taxpayer if the credit had not been granted for  
11 the qualified investment (or part of the qualified investment) that  
12 was not made by the taxpayer within the time required by  
13 subsection (a).

14 (2) Interest at a rate established under IC 6-8.1-10-1(c) on the  
15 additional amount of state tax liability referred to in subdivision  
16 (1).

17 SECTION 21. IC 6-3.1-32-19, AS ADDED BY P.L.235-2007,  
18 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
19 JULY 1, 2011]: Sec. 19. (a) If a taxpayer (or any successor in interest  
20 of the taxpayer) fails to satisfy any condition of this chapter or any  
21 condition in an agreement under section 13 of this chapter, or fails to  
22 file tax returns as required by section 18 of this chapter, the corporation  
23 ~~may~~ **shall**:

24 (1) disallow the use of all or a part of any unused tax credit  
25 granted to the taxpayer (or any successor in interest of the  
26 taxpayer) under this chapter;

27 (2) recapture all or a part of the tax credit under this chapter that  
28 has been applied to the state tax liability of the taxpayer (or any  
29 successor in interest of the taxpayer); or

30 (3) both disallow the tax credit under subdivision (1) and  
31 recapture the tax credit under subdivision (2).

32 (b) A taxpayer may not receive a credit under this chapter unless the  
33 taxpayer:

34 (1) consents that the taxpayer (and any successor in interest of the  
35 taxpayer) will be subject to the jurisdiction of Indiana courts;

36 (2) consents that service of process in accordance with the Indiana  
37 Rules of Trial Procedure is proper service and subjects the  
38 taxpayer (and any successor in interest of the taxpayer) to the  
39 jurisdiction of Indiana courts; and

40 (3) consents that any civil action related to the provisions of this  
41 chapter and in which the taxpayer (or any successor in interest of  
42 the taxpayer) is a party will be heard in an Indiana court.

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1 SECTION 22. IC 34-30-2-14.7 IS ADDED TO THE INDIANA  
2 CODE AS A NEW SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2011]: **Sec. 14.7. IC 5-14-3.5-5 (Concerning**  
4 **the auditor of state and employees of the auditor of state for**  
5 **posting confidential information).**

6 SECTION 23. IC 5-28-2-5.5 IS REPEALED [EFFECTIVE JULY  
7 1, 2011].

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